IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14104 of 2004

Between:

Yada Rajaiah, S/o.Lachayya,
R/o.2-3-77, Big Bazar, Nizamabad Dist.

...PETITIONER

AND

The Commissioner, Nizamabad Municipal Council, Nizamabad Dist.

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the Respondent in threatening to demolish the petitioner's house bearing No.2-3-77 situated at Big Bazar, Nizamabad, without issuing any notice under Municipalities Act or Land Acquisition Act, as illegal, arbitrary and against the principles of natural justice.

Counsel for the Petitioner: MRCH.JANARDHAN REDDY

Counsel for the Respondent: MR.R.TIMMA REDDY

The Court at the admission stage made the following:

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ORDER:

The petitioner alleges that he is the owner of the house bearing No.2-3-77, situated at Big Bazar, Nizamabad. He is running Kirana and General Stores in the said premises and paying property tax regularly. It is alleged that the respondent herein started work for widening of the road and demolished certain buildings, which are adjacent to the house of petitioner without issuing any notice. Apprehending the action of the respondent that his building may also be demolished at any time, he filed the present Writ Petition alleging that any such action without due process of law under the provisions of the A.P. Municipalities Act, 1965, or the Land Acquisition Act, 1894 or other law is arbitrary and illegal.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Municipality.

In ***P.Lakshmana Rao v. Executive Officer***, a Division Bench of this Court issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for public purpose. Having regard to the decision of the division Bench, I have considered similar issue in a number of writ petitions and culled out various principles of law to be followed by the government while acquiring/utilizing the private land for road widening. The principles were reiterated by my learned brother, Sri Justice B.Sudershan Reddy in ***M.Madhavi Latha v. Rajendranagar Municipality***. The principles laid down by the Division Bench are as follows.

(1). Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

(2). If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any, from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

(3). In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

(4). If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

(5). In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R&B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

(6). If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

The Writ Petition is disposed of as above, directing maintenance of *status quo* as on today, if petitioner is still in possession of the property as on today. No costs.

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(V.V.S.RAO, J)

10th August 2004

Note: Wire at party's cost

B/O

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner, Nizamabad Municipal Council, Nizamabad Dist.
2. Two CD copies.